

**REMARKS**

Claims 1-5 and 8-21 are currently pending in the application. New claims 20 and 21 have been added. Support for the amendments to independent claims 1, 3 and 12 can be found throughout the specification and particularly in the Figures, as originally filed. Support for new dependent claim 20 can be found throughout the specification and particularly on pages 8 and 9 of the specification, as originally filed. Support for new independent claim 21 can be found throughout the specification and particularly on page 9 of the specification, as originally filed. Applicant requests reconsideration of the application in light of the following remarks.

**Telephone Interview**

Applicant's attorney wishes to thank the Examiner for his courtesy and time during a telephone interview that was held on June 9, 2009. The Examiner's comments and insight were very helpful in preparing this response. In particular the claimed garment body comprised of a jacket having a torso portion and the types of airbags were discussed. It is hoped that the comments below reflect the spirit of the interview.

**Rejections under 35 U.S.C. §103**

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the cited prior art reference must teach or suggest

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all of the claim limitations. Furthermore, the suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based upon the Applicants' disclosure. A failure to meet any one of these criteria is a failure to establish a *prima facie* case of obviousness. MPEP §2143.

### Claims

Claims 1, 2 and 12-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Shusterman (U.S. Publication No. 2003/0023146, hereinafter "Shusterman"), in view of Davidson (U.S. Publication No. 2004/0003455, hereinafter "Davidson"), in view of Heilman et al. (U.S. Publication No. 2003/0158593, hereinafter "Heilman"). Applicant respectfully traverses this rejection and requests reconsideration of the claims.

Independent claim 1 recites "the step of using at least two different types of medical treating devices." As the Examiner correctly pointed out, Shusterman does not disclose using medical treating devices for applying medical treatments to the user. Davidson fails to overcome the deficiencies of the primary reference, Shusterman. Davidson only discloses inflatable elements. Independent claim 12 also recites "wherein the first and second medical treating devices are of different types of medical treating devices."

It is noted that in Shusterman paragraph [0083] the system includes sensors to determine when a person has **fallen**. The sensors do not determine whether a person is going to fall or is falling and clearly does not apply medical treatment. The wearable inflatable system of Davidson only adjusts the trajectory of a falling body. Shusterman and Davidson are clearly not combinable as the sensors in Shusterman detect only when a person has fallen whereas the sensors in Davidson sample movement, i.e. falling.

Independent claims 1 and 12 now also recite "a garment body comprised of a jacket having a torso portion." The wearable inflatable system of Davidson is clearly not a jacket

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having a torso portion. In Davidson, the inflatable elements may be worn in the hip area, the waist, the back or the buttock and are attached to the body by a belt or harness attached to the body.

New independent claim 21 recites " wherein the sensors are **installed in** the air bags and kept in contact with a user to detect posture of the user." The sensors in Shusterman are clearly not installed in air bags and kept in contact with the user as there are no air bags or any medical treating devices for that matter, disclosed in Shusterman.

Heilman also fails to overcome the deficiencies of both Shusterman and Davidson. Heilman employs only one type of medical treating device, a defibrillator, and not at least two different types of medical treating devices and/or different types of medical treating devices, as recited in independent claims 1 and 12, respectively. In addition, there is no disclosure of a monitoring center and/or a communication port, as recited in independent claim 1, anywhere in Heilman. As with Davidson, there is no disclosure of "a garment body comprised of a jacket having a torso portion," as recited in independent claim 1 and 12. The support garment of Heilman consists of only straps.

Furthermore, if an independent claim, such as claims 1 and 12, is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is also nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts, based on the arguments provided *supra*, that claims 2 and 13-18 are nonobvious.

Applicant respectfully requests that the obviousness rejections of claims 1-2 and 12-18 be withdrawn.

Claims 3-5 and 8-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Shusterman (U.S. Publication No. 2003/0023146, hereinafter "Shusterman"), in view of

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Davidson (U.S. Publication No. 2004/0003455, hereinafter “Davidson”). Applicant respectfully traverses this rejection and requests reconsideration of the claims.

Application of Shusterman and Davidson is the same as set forth, *supra*. Independent claim 3 recites “wherein the airbags are of the type that correct the posture of the user, that fix a broken bone in position, that stop the bleeding of blood, that apply a sudden pressure to stimulate the user to determine whether the user is conscious, that apply cardio-pulmonary resuscitation or abdominal thrust (Heimlich maneuver) to the user.” None of the recited types of airbags are described in Davidson. Davidson is directed to only changing the orientation of a falling body creating a more proper falling position, particularly in paragraphs [0015] to [0017], as referred to by the Examiner. The airbags of Davidson do not correct the posture of a user. The term posture refers to the erect posture of a user. The types of airbags recited in independent claim 3 are neither inherent nor obvious to one of ordinary skill in the art in light of Davidson.

Independent claim 3 now also recites “a garment body comprised of a jacket having a torso portion.” The wearable inflatable system of Davidson is clearly not a jacket having a torso portion. In Davidson the inflatable elements may be worn in the hip area, the waist, the back or the buttock and are attached to the body by a belt or harness attached to the body.

New claim 20 recites “wherein at least one of the plurality of zones comprises an electroshock device and a plurality of airbags mounted inside the garment body and wherein the plurality of airbags is selected from the group consisting of airbags that apply cardio-pulmonary resuscitation, airbags that apply abdominal thrust and/or airbags that apply a sudden pressure to stimulate the user to determine whether the user is conscious.” Support for new claim 20 can be found throughout the specification and particularly on pages 8 and 9 of the specification, as originally filed. The airbags recited in new claim 20 are found in Zone D of Applicant’s invention. Only the airbags in Zone E and Zone F are used for

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correcting the user's posture, not Zone D. There is no disclosure of the types of airbags as recited in new claim 20 anywhere in Shusterman or Davidson. Davidson discloses only an inflatable system which inflates and adapts to adjust the trajectory of the body during a fall. Further, the types of airbags recited in new claim 20 are not simply design choice nor is a mere statement that a particular claim limitation is design choice adequate to prove obviousness.

Furthermore, if an independent claim, such as claim 3, is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is also nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts, based on the arguments provided *supra*, that claims 4, 5 and 8-11 are nonobvious.

Applicant respectfully requests that the obviousness rejections of claims 3-5 and 8-11 be withdrawn.

Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Shusterman (U.S. Publication No. 2003/0023146, hereinafter "Shusterman"), in view of Davidson (U.S. Publication No. 2004/0003455, hereinafter "Davidson"), in view of Heilman et al. (U.S. Publication No. 2003/0158593, hereinafter "Heilman") as applied to claim 1 above and further in view of Starkweather et al. (U.S. Publication No. 2001/0041920, hereinafter "Starkweather"). Applicant respectfully traverses this rejection and requests reconsideration of the claims.

Application of Shusterman, Davidson and Heilman is the same as set forth, *supra*. Dependent claim 19 recites "[t]he method as claimed in claim 1 comprising the step of using biochips implanted in the person" and is therefore not made obvious by Shusterman, Davidson and/or Heilman.

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Starkweather fails to overcome the deficiencies of Shuster man, Davidson and Heilman.

The Examiner is relying on the sensors in paragraph [0083] of Shusterman that determine when a person has fallen and not the glucose sensors in paragraph [0092] to reject independent claim 1. The glucose sensor in paragraph [0092] is in no way related to whether a person has fallen or is falling or inflatable elements.

Applicant respectfully requests that the obviousness rejections of claim 19 be withdrawn.

It is difficult, if not impossible, to imagine how one skilled in the art in possession of these references could conceive of the present invention absent hindsight reconstruction which was prohibited by the Supreme Court in *Diamond Rubber Co. v. Consolidated Rubber Tire Co.*, 220 U.S. 428 435-436 (1911). To find obviousness, “there must be some reason for the combination other than the hindsight gleaned from the invention itself.” *Interconnect Planning Corp. v. Feil*, 227 U.S.P.Q. 543, 551 (Fed. Cir. 1985). Stated in another way, “[I]t is impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious.” *In re Fritch* 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992).

Applicant respectfully submits that the combination of the references for the purposes of the present rejection is improper because of the failure of any reference to suggest the combination. It is a requirement that in making a combination of patents in a rejection, those patents must suggest the desirability of the combination of teachings. This requirement was expressed by the Court of Customs and Patent Appeals in In re Imperato, 179 U.S.P.Q. 730 where it stated:

“...the mere fact that those disclosures can be combined does not make the

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combination obvious unless the art also contains something to suggest the desirability of the combination.”

Since the cited references are devoid of any teaching as to the desirability of the combination, it is submitted that the rejection based on the combination is therefore untenable. Therefore, without a teaching or suggestion of the desirability of the combination, the rejection could have only been made upon a hindsight reconstruction from the teaching of Applicant’s own disclosure.

It is well settled that the question of obviousness must be approached without recourse to the teaching of Applicant’s specification. It is respectfully submitted that without recourse to the teaching of the present specification, the problem solved by the present invention and any technique capable of solving them were not contemplated by the applied references and it is not reasonable to conclude from such a failure that the invention was obvious at the time the invention was made to a person having ordinary skill in the art. This is specifically discussed in In re Sponnoble, 160 U.S.P.Q. 237, at page 243, where it was stated:

“The court must be ever alert not to read obviousness into an invention on the basis of Applicant’s own statements, that is we must view the prior art without reading into that art of Applicant’s teachings.”

### **Regarding Doctrine of Equivalents**

Applicant hereby declares that any amendments herein that are not specifically made for the purpose of patentability are made for other purposes, such as clarification, and that no such changes shall be construed as limiting the scope of the claims or the application of the Doctrine of Equivalents.

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### **CONCLUSION**

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

It is requested that a one-month extension of time be granted for the filing of this response, and the appropriate extension filing fee of \$65.00 be charged to credit card.

The amendments herein added 1 new independent claim, resulting in fees due of \$110.00. The appropriate fee should be charged to credit card.

If any fees, including extension of time fees or additional claims fees, are due as a result of this response, please charge Deposit Account No. 19-0513. This authorization is intended to act as a constructive petition for an extension of time, should an extension of time be needed as a result of this response. The examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

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